

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.218 OF 2021

**VERONICA LYIMO (Administratrix of the Estate of the late
Joachim Lyimo) PLAINTIFF**

VERSUS

THE COMMISSIONER FOR LANDS.....1ST DEFENDANT

ROGERS SEMGAYA SEZINGA.....2ND DEFENDANT

SELEMANI JUMA SALAMBA.....3RD DEFENDANT

MUSSA MWIHUMBO LYIMO.....4TH DEFENDANT

THE ATTORNEY GENERAL.....5TH DEFENDANT

R U L I N G

Date of Last Order: 30. 05.2022

Date of Judgment: 15.06.2022

T. N. MWENEGOHA, J.

On the 13th of April 2022, the 2nd defendant, Mr. Rogers Sengaya Sezinga, filed his Written Statement of Defence with the following objections against the instant suit:-

1. The suit is time barred.

**2. The suit contravenes the Provisions of section 101 of the
Land Registration Act, 334, R. E. 2019.**

The objections were heard by way of written submissions. Advocate Jamhuri Johnson appeared for the 2nd defendant while the plaintiff enjoyed the legal services of Advocate Elisa Jones Mndeme.

Submitting on the first objection, Mr. Johnson maintained that, the suit is time barred. It is because the cause of action arose in 2003 when the 2nd defendant acquired the land in dispute. That, as per the plaint, it has been stated that the 2nd defendant was given a Certificate of Title over the said land in 2003. Therefore, it is obvious that the instant case contravenes the provisions of Section 9 (2) of the Law of Limitations Act, Cap 89 R. E. 2019 and Item 22, Part 1 of the Schedule which provides a time the suit for recovery of land to be 12 years. He insisted that this suit should be dismissed as per Section 3 (1) of the Limitations Act, Cap 89, R. E. 2019.

On the 2nd limb of objection, it was argued that, since the land in question has been already surveyed and allocated to other persons, the remedy available to the plaintiff is to lodge an application to the Registrar under section 101 of the Land Registration Act, as an aggrieved person. It is wrong to bring a fresh suit like she did. Mr. Johnson cited the case of **Sultan Bin Hilal El Hersi vs. Mohamed Hilal and 2 Others, High Court of Tanzania, Commercial Division, Commercial Case No. 91 of 2013 (unreported)**.

In reply, Mr. Mndeme contended that, the objections are devoid of merits and should be dismissed for failure to meet the rules proposed in **Mukisa Biscuits Manufacturing Company Limited vs. West End Distributors Limited (1969) EA 696**.

That, the 1st objection is baseless. That, the plaintiff was working with the 1st defendant to resolve the matter. Up to the year 2012. The 1st defendant informed the plaintiff that the matter had not reached any decision yet. Therefore, the cause of action in this suit did not arise in 2003. He went on to argue on the 2nd objection that, to date, the title of the suit property has not been revoked. Therefore, any other title on the ownership of the suit lands is null and void.

Having gone through the submissions of both counsels on behalf of the parties concerned (2nd defendant and the plaintiff), the issue for determination is whether the objections have merits or not. The 1st objection is about this suit to be barred by time. The 2nd defendant has insisted that, since he acquired the title over the said land in 2003, then 12 years for suing to recover the same has lapsed. However, reading the plaint at paragraphs 16.0 - 18.0, it is clear that the plaintiff became aware of the presence of the 2nd defendant and the others in the suit land on 9th July, 2021. This was the time when she was summoned at the Kinondoni Municipal Council and was informed of the presence of the defendants including the 2nd defendants in the suit land. Hence this suit is well filed within the time required. It is not time barred. The 1st objection is overruled.

The 2nd objection was that, the suit contravenes mandatory provisions of section 101 of the Land Registration Act, Cap 334 R. E. 2019. It was maintained that; the plaintiff was supposed to make an application to the Registrar of titles instead of this case. This is due to the fact that, the land in question has already been allocated to another person. For easy

reference I will reproduce section 101 of the Land Registration Act as follows:-

101. "Where under this Act the Registrar makes any decision or order or does any act he shall, on the application of any person affected thereby, give that decision or order in writing and state his reasons therefor or, as the case may be, give his reasons in writing for that act".

In my opinion, the 2nd objection also lacks merits. This provision doesn't mandate a person aggrieved by the decision of the registrar to file an application before him or her, rather when the application to the registrar has been made, the registrar must communicate his decision or order to the applicant in writing. It doesn't bar the applicant to contest for his or her ownership interests over the suit land. The 2nd objection is also devoid of merits.

In the end, both objections are overruled. The main case shall proceed to be heard on merits until its final determination. Costs to follow the event.

It is so ordered.




T. N. MWENEGOHA

JUDGE

15/06/2022